
(2022) 02 CAT CK 0001
In the Central Administrative Tribunal
Case No : Original Application No. 85 Of 2015

Motibhai	Vs	APPELLANT
Bharat Sanchar Nigam Ltd & Others		RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Central Civil Services (Classification, Control And. Appeal) Rules, 1965 — Rule 14

Citation : (2022) 02 CAT CK 0001

Hon'ble Judges : Jayesh V. Bhairavia, Member (J); Dr. A.K. Dubey, Member (A)

Bench : Division Bench

Advocate : P.H. Pathak, R.R. Patel

Final Decision : Dismissed

Judgement

Dr. A. K. Dubey, Member (A)

1. Aggrieved by the delay in grant of upgradation of scale on completion of stipulated four years, the applicant has filed this OA seeking following

reliefs:-

â??[A] The Hon. Tribunal be pleased to declare that the impugned decision dated 20-1-2012 of respondent no.3 vide letter

no.FC/TBPP/2010/51 at Annexure-A/1, as illegal, unjust, arbitrary and be pleased to quash and set aside the same.

[B] Be pleased to direct the respondents to grant all consequential benefits to the applicant as if he was granted first time bound promotion

after 4 years of service i.e., from 25-2-2007 and 2nd promotion there after 5 years of service respectively 25.2.2012.

[C] Be pleased to declare that the applicant was illegally deprived of the benefits of time bound promotion and direct the respondents to

grant benefits of upgradation to the applicant from retrospective date i.e., 25-2-2007 with all consequential benefits.

[D] Be pleased to direct the respondent no.1 to fix the responsibility of the erring officer and further direct the respondent no.1 to pay

special cost and compensation, interest on the amount payable to the applicant and to be recovered from the personal pay of the erring officer.

[E] Any other relief this Honâ??ble Tribunal deem fit and proper, in interest of justice.â??

2. The applicant claims that on passing the JAO Examination, he was promoted to the scale of Rs.5500-175-9000 (CDA Scale) vide order dated

25.02.2003 (Annexure-A/2). As per the extant policy, he should have been granted the first time bound upgradation on completion of four years as

provided for in the policy dated 18.01.2007 (Annexure-A/7). Accordingly, he should have got the upgradation w.e.f. 25.02.2007. Instead, he actually

got it w.e.f. 19.08.2007 vide order dated 04.09.2010 (Annexure-A/3). He contends that this delay is tantamount to denial of his legitimate right.

2.1 The applicantâ??s say is that he was awarded a minor penalty in the year 2009 and on that plea denying him the upgradation which was due in

2007, was bad in law. He contends that the DPC did not apply its mind and he should have been promoted on completion of four years of service i.e.

in 2007. He claims that the plea of penalty was also bad in law because this penalty was not there in the year 2007 and at that time, not considering

this fact went on to hamper the legitimate interest of the applicant.

3. The applicant also filed M.A. No.64/2015 for condonation of delay. This M.A. has already been allowed on 08.09.2021. Later, he filed yet another

MA No.371/2018 seeking amendment for grant of 2nd upgradation.

4. Upon notice, the respondents filed their reply. The main say of the respondents is that a Memorandum in course of disciplinary proceedings was

issued on 06.07.2006 (Annexure-R/1) proposing to hold an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. This

proceeding concluded vide order dated 19.02.2009 (Annexure-R/2) and the operative portion of this order is quoted below:-

â??It is therefore ordered that the pay of Shri M.M.Makwana, JAO, merely reduced by one stage from Rs.11350-11100/- in the time scale

of pay of Rs.9850-250-14600/- for a period of six (6) months with immediate effect. It is further directed, that Shri M.M.Makwana, JAO will

not earn increments during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his

future increments of pay.â??

This penalty was imposed with immediate effect and the period of six months was counted from the date of this order i.e. 19.02.2009. Accordingly,

vide order dated 04.09.2010 (Annexure-R/3), the applicant was granted the upgraded scale w.e.f. 19.08.2009 i.e. after completion of six months of the penalty period.

4.1 Respondents have particularly drawn attention to the provision contained in para 3.1 of one (I) (3) qualifying service conditions which reads as

under:-

â??3.1 First upgradation: The FIRST UPGRADATION of IDA scale of individual Executive will be due for consideration on completion of 4

(Four) years of Service in the current IDA scale subject to the condition that the Executiveâ??s basic pay in the current IDA scale has

crossed/touched the lowest of the higher IDA scale for which his/her upgradation is to be considered OR he/she has completed six years of

service in the current IDA scale, whichever is earlier.â??

Here the applicant was appointed to the Grade of JAO, in the then existing CDA pay scale of Rs.5500-175-9000/- vide order dated 20.02.2003

(Annexure-A/2). Later, this scale of JAO was revised into IDA scale of Rs.9850-250-14600/- which was further revised to IDA pay scale of

Rs.16400-40500/-. Vide order dated 04.09.2010 (Annexure-R/3), the applicant was granted upgradation to the IDA pay scale of A.O. i.e. Rs.20600-

46500/- on completion of 4 to 6 years of service in their current IDA scale. This A.O.â??s scale was revised from the scale of Rs.11875-300-

17275/-. Annexure-A/3 brings out that there was a Screening Committee Procedure for considering the grant of upgraded scale and this procedure

emanated from the Office Memorandum dated 18.01.2007 (Annexure-A/7). The order dated 04.09.2010 also required to comply with the Stipulation

at para 3.1 of 1(I) (3) of the O.M. dated 18.01.2007.

5. Matter came up for final hearing on 08.09.2021. The counsel for the applicant furnished the points of argument which mainly centres around the

stipulation that he had completed 4 years of continuous service in the Grade of JAO in 2007 and therefore, the upgradation to the scale of A.O. should

have been granted to him from 2007 and not from 2009. The counsel's written argument also contends that the minor penalty imposed in the year

2009 was not there in 2007 and therefore taking that account was without application of mind. He also contends that the minor penalty should have

been imposed on the higher scale of pay. But not granting with effect from 2007 was like double penalty and for this purpose he has relied on the

order of Hon'ble Gujarat High Court in Sardar Momad Umarbhai High Makrani vs Gujarat Rural Housing Board and Ors. [2012 (3) GLR 2050].

His contention is that the Discipline Committee cannot award two punishment ie. withholdings the increment and withholding the promotion. He has

stated in the written argument that the applicant has since superannuated and because he was illegally denied the benefits, he should be awarded

special cost and interest.

6. These points had been reiterated in the rejoinder filed by the applicant.

7. Heard both the counsel at length reiterating what had been submitted in the OA and subsequent details.

8. After listening to their arguments and after going through the documents and material brought before us, it is clear that although the applicant would

have completed four years of regular service in the year 2007, Memorandum of charges was issued on 06.07.2006 i.e., before completion of four

years of service, subjecting the applicant to the proceedings under Rule 14 of CCS (CCA) Rules, 1965. Thus, on the eve of completion of four years

of applicant's service, the disciplinary proceedings were continuing. The counsel for the respondents said that because of this pending disciplinary

proceeding, the applicant was not clear from the vigilance angle. This proceeding concluded vide order dated 19.02.2009 which resulted in award of

penalty of withholding one increment for a period of six months with the effect of postponing his future increments. This period of penalty was over on

completion of six months from 19.02.2009. Exactly on completion of six months, the applicant has been granted upgradation w.e.f. 19.08.2009.

Interestingly the order dated 04.09.2010, which granted him the upgradation, contains several other names who had found place in the appointment

order dated 20.02.2003. A plain reading of this order gives an impression that

the Screening Committee which made recommendations for these upgradation had considered the name of the applicant alongwith other eligible candidates and accordingly, the upgradation was effected. We also see that the procedure for fixation of pay has to be in accordance with the provisions contained in para 3.1 of the Rules following from the OM dated 18.01.2007 quoted above. It is evident too that, several of other names who had joined the service in 2013 had been granted upgradation apparently on completion of six years of continuous service in the grade of JAO (Annexure-A/3). By way of exception, the applicant's date of upgradation is shown as 19.08.2009 which as submitted by the respondents in the reply and confirmed by the counsel in course of hearing is on account of imposition of penalty. It is therefore, evident that there is neither any discrimination against the applicant nor any infirmity in the grant of the upgradation vide order dated 04.09.2010 (Annexure-R/3). Accordingly, we do not find any reason to intervene into the matter. The OA lacks merit and is therefore, dismissed. M.A. No.371/2018 also is dismissed. No orders as to cost.